

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of:

Telecommunications Relay Services  
and  
Speech-to-Speech Services for  
Individuals  
with Hearing and Speech Disabilities

CC Docket No. 03-123  
(DA 05-2961)

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC  
UTILITIES COMMISSION AND THE PEOPLE OF THE  
STATE OF CALIFORNIA**

The California Public Utilities Commission and the People of the State of California (CPUC or California) here submit this reply to comments on the Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service (petition), filed October 31, 2005 by a group of advocacy organizations and professional organizations (hereafter, collectively, “petitioners” or “filing parties”).<sup>1</sup> Petitioners ask the FCC to “initiate a

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<sup>1</sup> The parties appearing as signatories to the petition are as follows: Self Help for Hard of Hearing People (SHHH), the Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), the American Academy of Audiology (AAA), the American Association of People with Disabilities (AAPD), the American Speech-Language-Hearing Association (ASHA), the Association of Late-Deafened Adults

rulemaking for the purpose of mandating captioned telephone relay service [ ] nationwide and approving Internet Protocol (IP) captioned telephone for cost recovery through the Interstate Telecommunications Relay Service (TRS) Fund”.<sup>2</sup>

The CPUC will not comment here on all issues. Silence on any particular issue does not connote either agreement or disagreement with petitioners’ representations or positions on those issues.

## **I. INTRODUCTION**

The CPUC again wishes to acknowledge the strong enthusiasm and support from consumers who are deaf, hard of hearing, or late-deafened for captioned telephone service (CTS), which the FCC has identified as an enhanced form of Voice Carry Over (VCO). The CPUC is eager to work with the FCC in finding solutions that would allow us to offer unrestricted deployment of captioned telephone service but such an offering must be in a way that is responsive to the budgetary constraints that are an unfortunate reality in most states.

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(ALDA), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the League for the Hard of Hearing (LHH), the National Association of the Deaf (NAD), the National Cued Speech Association (NCSA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the California Association of the Deaf (CAD), and the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH).

<sup>2</sup> Petition, p. 1.

The CPUC also looks to the FCC for solutions to the very real problem of restrictive practices currently imposed on the availability of captioned telephone service by a sole source. The limited availability of CTS seems to hinder rather than enhance provision of this popular service to significant numbers of consumers.

## **II. THE LIMITED AVAILABILITY OF CTS IS A MAJOR HURDLE TO MANDATED PROVISION OF THE SERVICE**

### **A. Sole Source Provision of CTS Is Risky**

In its comments, MCI indicated that not all relay providers have the ability to offer captioned telephone services because of the restrictive licensing arrangements currently practiced by the sole manufacturer of captioned telephone devices, Ultratec, of its proprietary product, CapTel, as well as the services provided through their CTI relay center.<sup>3</sup> California agrees with MCI's concern that if captioned telephone service were to be mandated, some relay providers would be subjected to an unfair disadvantage in the TRS marketplace.

The FCC has a long tradition both of encouraging competition in the provision of traditional relay service and of recognizing the benefits of TRS to consumers. For example, in its *Report and Order and Order on Reconsideration*, released December 12, 2005, the FCC repeatedly

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<sup>3</sup> MCI, Inc. Comments, p. 5.

referred to the importance to consumers of having additional choices, the importance of enhancing competition, and the potential for reduction of costs when there is competition.<sup>4</sup>

California also notes that VCO is an integral part of traditional relay service and is offered on an unrestricted basis by all vendors. In light of this strong FCC tradition, it would be premature for the FCC now to virtually endorse a product that originates from only one source (Ultratec).

**B. Sole Source Provision of CTS May Conflict with Existing State Law**

Some states are restricted by law from having more than one relay provider. In practice, even if not restricted by law, most states have determined that it is not practical for them to manage more than a single relay provider. For example, only bidders offering both traditional relay and captioned telephone service were eligible to bid relay services to the State of Montana.<sup>5</sup> In fact, California is the only state that encourages multiple relay providers to serve its residents.

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<sup>4</sup> See *Report and Order and Order on Reconsideration*, FCC 05-203, CC Docket No. 03-123, released: December 12, 2005, ¶¶ 19, 21, 26, and 29.

<sup>5</sup> State of Montana Request for Proposal for Information Technology; Telecommunications Relay Services and Captioned Telephone Relay Services, issued June 16, 2005

If the FCC were to mandate that states provide and pay for CTS, certain established relay service providers, companies such as MCI, could be prohibited from providing their relay services to certain states. This would be true because those providers are not allowed to offer Ultratec's captioned telephone relay service or the CapTel product, the only captioned telephone device currently, and for the foreseeable future, available to the public. Relay service providers excluded from contracts with Ultratec's CapTel product and relay service might be able to subcontract with one of their competitors in order to comply with a state's one-provider requirement. California, however, believes such a condition would place those providers in an untenable negotiating posture in securing such an agreement with a competitor. The providers without a direct agreement with Ultratec also would have a significant pricing and service coordination disadvantage in a competitive bid against that competitor.

Additionally, individual states may have statutes that are in conflict with the provision of CTS, as it is currently offered. Some states have enacted laws that specify that their relay services must be provided within their state. Minnesota, Virginia, and Massachusetts are three examples of states with such a requirement.

Another concern to the CPUC is that relevant California law pertaining to consumer's privacy requires that whenever a third party is recording or monitoring a telephone conversation, all parties to that conversation must be so advised.<sup>6</sup> Presently, when a captioned telephone call originates on a CapTel device and the other party is called, that second individual has no indication that a third party (the communications assistant/operator) is also participating in the call. This situation does not arise in other forms of telephone relay service the FCC mandates.

### **III. THE FCC MUST CONSIDER THE FINANCIAL BURDEN ON THE STATES OF MANDATED CTS**

In its comments, Florida expressed concerns about budgetary constraints that would result if states were required to pay for a mandated and widely-distributed captioned telephone program. In our Comments filed in December 2005, California identified similar concerns. Further, beyond the expense of the relayed calls, we believe some contracts are based on "connect" minutes and not "conversation" minutes. In either case, the CPUC wishes to remind the FCC that California's relay service contracts contain a requirement that only actual relay call-minutes be calculated and billed. This means that

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<sup>6</sup> See CPUC General Order No. 107-b.

only the specific time CTS actually is engaged in relaying a conversation is billable. The relay center documents the engagement of CTS by recognizing the electronic serial number (ESN) of the engaged captioned telephone. We note that the captioning feature may be turned off and on throughout a conversation and used only as needed but not necessarily for the duration of the conversation.

During California's expanded field trial of captioned telephone service, we have insisted on reports confirming that an ESN was identified as being on a call. In analyzing those reports, we have become concerned that the existing captioned service provider may have billed California for minutes of use when an ESN is not identified and no relay service was actually provided. Consequently, we recommend that comprehensive reporting and auditing of the captioned telephone service, including ESN verification that a captioned telephone device is engaged with the conversation, should be required. Further, California recommends that this requirement should attach regardless of whether the service is reimbursed from the Interstate Relay Fund or by the states.<sup>7</sup>

California also has expressed concerns to Ultratec and its representatives that the CapTel telephone, with features such as one-

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<sup>7</sup> Although, again, if the FCC were to mandate CTS but not authorize full reimbursement from the Interstate Relay Fund, California would oppose mandatory CTS.

button speed dialing and an amplified handset, appears like - and can perform like - any other telephone in a household. If a family member not in need of the relay service wishes to dial out using this full-featured telephone, unnecessary relay conversation billing may be [generated. In the case of a two-line captioned telephone service, when an incoming call to the captioned telephone is answered, the current factory setting is to automatically dial the relay center regardless of the source of the inbound call or the individual within the household that answers the ringing telephone. While California recognizes the value of the features and convenience designed into the current captioned telephone, it is these very “normal features”, as well as the convenience, that may encourage misuse by those who do not need relay service. California would like to know how the manufacturer would propose to reduce the potential of this unwarranted expense to the states and the Interstate Relay Fund.

California also has expressed concerns to our vendors about the way in which E-911 calls are handled using the current single-line captioned telephone service. The particular process employed may be somewhat confusing both for consumers in the panic of the moment, and for the PSAP personnel who are required to respond to the



emergency. We note that the Florida Public Service Commission has also expressed similar concerns.<sup>8</sup>

The CPUC also suggests that the FCC, in considering mandated CTS, consider establishing appropriate standards. For example, California notes that Montana's captioned telephone requirements include a minimum speed of 125 words per minute (wpm) for the receipt of text, 98% accuracy measured as the percentage of error subtracted from 100%, and a 2% or less error rate measured as any word that changes the context of the sentence including missing words or sentences.<sup>9</sup> The CPUC urges the FCC to consider developing and imposing standards for the provision of CTS to ensure quality of service to users.

#### **IV. CONCLUSION**

The CPUC strongly supports evolving technologies such as captioned telephone service, and recognizes its value to consumers. However, we believe that mandating CTS, without ensuring fair and open access by all relay providers to represent the only product on the market, would dramatically restrain those companies in their ability to compete for state's relay contracts. The result may lead ultimately to the elimination from the relay marketplace of companies with a long

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<sup>8</sup> Florida Public Service Commission Comments, p. 2.

<sup>9</sup> State of Montana Request for Proposal, p. 42.

tradition of providing excellent relay services. Such a result also would be in conflict with the FCC's record of encouraging competition and multi-vendor competition in the TRS industry.

Finally, California remains deeply concerned about the financial burden mandated CTS would place on the states, and continues to recommend that mandatory CTS be reimbursed from the Interstate Relay Fund.

Respectfully submitted,

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